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No. 76-1247

In the Supreme Court of the United States

OCTOBER TERM, 1976

GEORGE BLAIR, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

DANIEL M. FRIEDMAN,
Acting Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner contends that (a) government agents caused his divorce prior to trial in order to procure his former wife's testimony at trial; (b) government agents improperly met with him in the absence of his counsel after the return of the indictment; and (c) he was denied effective assistance of counsel.

After a non-jury trial in the United States District Court for the Eastern District of Michigan, petitioner was convicted of conspiracy to manufacture, possess, and distribute heroin and cocaine, in violation of 21 U.S.C. 846, and of 13 substantive narcotics violations, in violation of 21 U.S.C. 841. He was sentenced to a total of 17 and one-half years' imprisonment, to be followed by a special parole term of three years, and was fined $5,000 on each count. The court of appeals affirmed (544 F. 2d 242).

Briefly, the evidence at trial established the existence of a wide-ranging narcotics conspiracy, known as the "Jackson organization" after its leader, co-defendant Eddie Jackson. Petitioner, along with co-defendants Courtney Brown and Herbert Bell, were Jackson's chief lieutenants. Other co-defendants operated as preferred customers and wholesale distributors for the organization and performed various duties at the organization's headquarters in Detroit.[1]

1. Petitioner contends (Pet. 7-12) that the government caused his divorce from Ruth Ann Burt in order to aid its case at trial. This claim was fully answered by the court of appeals, upon whose opinion we rely (544 F. 2d at 254):

> [Petitioner] first presented this objection to the district court in a post-trial affidavit in support of his motion for a new trial. [Petitioner] did not testify at trial, nor did he present any witnesses who testified that the government "alienated" his marriage to Burt. The district court held that:
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> > there was no credible evidence indicating any improper conduct on the part of the government; rather the credible evidence, including testimony of defendant's former wife, Ruth Ann Burt, indicated the government did not act improperly.

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[1]The petition of co-defendant Leo Hurt for a writ of certiorari was denied on January 17, 1977 (No. 76-771) and the application for a stay of mandate of co-defendants Willie Lee Kilpatrick, Courtney Brown, Samuel Horne, Alphonso Jones, and Herbert Bell (No. A-700) was denied on March 21, 1977. The petition of co-defendant Cara Woods for a writ of certiorari (No. 76-1213) is presently pending.

We hold that the record adequately supports the trial court's finding, which is not clearly erroneous.[2]

2. Petitioner contends (Pet. 13-14) that government misconduct in meeting with him following his indictment and in the absence of his counsel requires the reversal of his conviction. About five months after petitioner's arrest, when he and Ruth Ann Burt were separated, Agent Ronald Garibotto of the Drug Enforcement Administration talked with Burt about the possibility of her testifying before the grand jury. Subsequently, Burt asked to meet the agent and stated that she would bring petitioner with her. When Burt told Agent Garibotto at the meeting that she wanted to negotiate immunity for petitioner, the agent replied that he would have to consult with the government attorney handling the case.

Thereafter, Agent Garibotto and the prosecutor met Burt and petitioner at the Ramada Inn. At this meeting Burt told of her knowledge of the narcotics organization and of petitioner's role in its activities. Petitioner also participated in the conversation, although no notes were taken of what he said. Finally, Burt asked if petitioner could be given immunity in return for her testimony, but she was told that immunity would not be granted unless petitioner himself testified. At the time of the Ramada Inn meeting, petitioner and virtually all other defendants were represented by one attorney, Milton Henry. The government did not inform

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[2]Petitioner's related claim (Pet. 11-12) that the divorce violated his right to counsel is frivolous. In substance, he urges that the confidentiality of the attorney-client relationship was breached because Burt may have related to government agents the details of statements petitioner made to her about discussions with his counsel. Such statements do not fall within the attorney-client privilege.

Henry of the meeting nor did it advise petitioner to contact Henry (544 F. 2d at 254).

The court of appeals correctly concluded that this incident did not require the reversal of petitioner's conviction or the suppression of any evidence. As the court observed (544 F. 2d at 255), the meeting was initiated by Burt (who was not under indictment) rather than the government, and the prosecutor could reasonably have believed that petitioner made a free and intelligent decision to conceal the meeting and his attempts to secure immunity from his attorney, who also represented his co-defendants. Furthermore, as both courts below found (*ibid.*), none of the evidence presented at trial was derived from that meeting.

3. Petitioner claims (Pet. 15-19) that he was denied effective assistance of counsel because two attorneys represented all of the defendants at trial. The court of appeals' thorough discussion (544 F. 2d at 268-269) demonstrates that petitioner knowingly waived his right to separate counsel and that, in any event, no conflict of interest adverse to petitioner resulted from the joint representation.[3]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

DANIEL M. FRIEDMAN,
Acting Solicitor General.

MARCH 1977.

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[3]The Court has recently declined to review this identical claim in the petition of co-defendant Hurt. See note 1, *supra*.